

member will be treated as a member-manager for purposes of this section.

(c) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner of an LLC occurring on or after December 23, 1996. Any other reasonable designation or selection of a tax matters partner of an LLC is binding for periods prior to December 23, 1996.

[T.D. 8698, 61 FR 67462, Dec. 23, 1996]

**§ 301.6231(a)(12)-1 Special rules relating to spouses.**

(a) *Spouses holding a joint interest*—(1) *In general.* Except as otherwise provided in this section, spouses holding a joint interest in a partnership shall be treated as separate partners for purposes of subchapter C of chapter 63 of the Internal Revenue Code. Thus, both spouses may participate in administrative and judicial proceedings. The term *joint interest* includes tenancies in common, joint tenancies, tenancies by the entirety, and community property.

(2) *Identification of joint interest.* For purposes of this section, an interest shall be treated as a joint interest in a partnership only if both spouses are identified on the partnership return or are identified as partners entitled to notice as provided in § 301.6223(c)-1(b).

(3) *Failure to identify both spouses as partners.* If both spouses are not identified as set forth in paragraph (a)(2) of this section, then the partnership interest shall be treated as separately owned by the identified spouse.

(4) *Example.* The following example illustrates the application of paragraph (a)(3) of this section:

*Example.* Wife owns an interest in ABC Partnership and is identified on the Schedule K-1 of the partnership return. Wife and Husband live in a community property state. The partnership return of ABC partnership does not identify Husband, and Husband is not identified as a partner entitled to notice as provided in § 301.6223(c)-1(b). Pursuant to paragraph (a)(3) of this section, the partnership interest of Wife shall be treated as separately owned by Wife.

(b) *Notice and counting rules*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, for purposes of applying section 6223 (relating to notice to partners of proceedings) and section 6231(a)(1)(B) (relating to the exception for small partnerships), spouses holding a joint interest in a partner-

ship shall be treated as one partner. Except as provided in paragraph (b)(2) of this section, the Internal Revenue Service or the tax matters partner may send any required notice to either spouse.

(2) *Identified spouse entitled to notice.* For purposes of applying section 6223 (relating to notice to partners of proceeding) for a partnership taxable year, an individual who holds a joint interest in a partnership with a spouse who is entitled to notice under section 6223 shall be entitled to receive separate notice under section 6223 if such individual—

(i) Is identified as a partner on the partnership return for that taxable year; or

(ii) Is identified as a partner entitled to notice as provided in § 301.6223(c)-1(b).

(c) *Conversion of partnership items*—(1) *In general.* If spouses holding a joint interest in a partnership are treated as separate partners under this section, then section 6231(b) (relating to the conversion of partnership items) shall be applied separately to each spouse.

(2) *Example.* The following example illustrates the application of paragraph (c) of this section:

*Example.* Husband and Wife own a joint interest in XYZ Partnership. The partnership return identifies both spouses on the Schedule K-1. Under this section, each spouse is treated as a separate partner. If Wife enters into a settlement agreement, Wife's partnership items convert to nonpartnership items pursuant to section 6231(b)(1)(C). Accordingly, Wife no longer has the right to participate in the partnership proceeding subsequent to entering into the settlement agreement. Pursuant to paragraph (c) of this section, however, the partnership items of Husband are not affected by the conversion of the partnership items of Wife, and Husband continues to have the right to participate in the partnership proceeding. This result is the same regardless of whether the partnership items are reported on a joint return or on separate returns.

(d) *Cross-reference.* See § 301.6231(a)(2)-1(a) for special rules relating to spouses who file joint returns with individuals holding a separate interest in a partnership.

(e) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(12)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50559, Oct. 4, 2001]